

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
CIVIL CASE NO. 3:18-cv-00188-MR**

**JAMES C. McNEILL,**

**Plaintiff,**

**vs.**

**MARQUHNE BENJAMIN  
JOHNSON, et al.,**

**Defendants.**

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**ORDER**

**THIS MATTER** is before the Court on the Defendants' Response to Court Order [Doc. 73] and the Plaintiff's Motion for Reconsideration to Appoint Legal Counsel and Request for Trial by Jury [Doc. 74].

On June 9, 2020, the Court entered an Order directing the parties to advise the Court whether they would agree to a bench trial in this matter. In that Order, the Court further ruled that the Plaintiff was not entitled to appointed counsel for the trial. [Doc. 72].

The parties have now responded to the Court's Order and have indicated that they elect not to waive their right to a jury trial. [Docs. 73, 74]. In light of the parties' responses, the Court will set this matter for a trial by jury during the first mixed term on or after January 11, 2021.

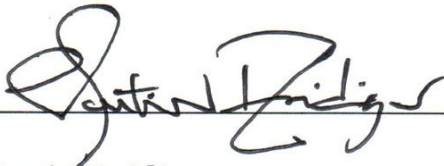
The Plaintiff moves the Court to reconsider the appointment of counsel to represent him at trial. [Doc. 74]. For grounds, the Plaintiff alleges that he has been deprived access to his legal materials while housed at Polk Correctional Institution. [Id.]. In response to the Plaintiff's motion, the Defendants have filed two affidavits detailing the events which led to the removal of the Plaintiff's personal possessions, including his legal materials, from his cell. These affidavits make clear that, despite the legal materials being removed from his cell pursuant to the facility's policy, the Plaintiff still has access to such materials on request. [See Doc. 75]. Accordingly, the Plaintiff has not presented exceptional circumstances warranting the appointment of counsel in this case. See Miller v. Simmons, 814 F.2d 962, 966 (4th Cir. 1987) (holding that plaintiff must present "exceptional circumstances" in order to justify appointment of attorney). Thus, the Plaintiff's motion for reconsideration of the Court's June 9, 2020 Order will be denied.

**IT IS, THEREFORE, ORDERED** that:

- (1) This case is hereby set for a trial by jury during the first mixed term beginning on or after **January 11, 2021**; and
- (2) The Plaintiff's Motion for Reconsideration to Appoint Legal Counsel [Doc. 74] is **DENIED**.

**IT IS SO ORDERED.**

Signed: July 14, 2020

  
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Martin Reidinger  
Chief United States District Judge

